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No. 04-397

In the Supreme Court of the United States

FORMER EMPLOYEES OF MARATHON ASHLAND PIPE LINE, LLC, PETITIONER

v.

ELAINE L. CHAO, SECRETARY OF LABOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the Secretary of Labor's determination that petitioners were not involved in the production of a good within the meaning of the Trade Act of 1974 is supported by substantial evidence and is otherwise in accordance with law.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 2a-24a) is reported at 370 F.3d 1375. The opinion of the Court of International Trade (Pet. Supp. App. 24-52) is reported at 277 F. Supp. 2d 1298.

JURISDICTION

The judgment of the court of appeals was entered on June 14, 2004 (Pet. App. 1a). A petition for a writ of certiorari was filed on September 9, 2004. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(l).

STATEMENT

1. Chapter 2 of Title II of the Trade Act of 1974 (Trade Act), Pub. L. 93-618, 88 Stat. 2019 (19 U.S.C.

2251 *et seq.*), offers certain forms of adjustment assistance to employees involved in the production of a good who lose their jobs because of competition from imported goods. The Act is administered by the Secretary of Labor. Upon receipt of a petition requesting assistance, the Secretary initiates an investigation. 19 U.S.C. 2271(a). Following the investigation, the Secretary makes a determination on a petitioner's eligibility. On judicial review, the Secretary's determination must be sustained if it is supported by substantial evidence and is otherwise in accordance with law. 19 U.S.C. 2395(b).

2. Petitioners are eight former employees of Marathon Ashland Pipe Line (Marathon Ashland). Pet. App. 4a. Marathon Ashland is a subsidiary of Marathon Ashland Petroleum LLC, a partnership owned by Marathon Oil Company and Ashland Inc. *Ibid.* Petitioners worked as gaugers in Bridgeport, Illinois. As gaugers, they tested crude oil that came from independent producers. Once tested and verified for quality, the crude oil was then transported to third-party purchasers or to the parent company's refinery in Robinson, Illinois. *Ibid.* In 1999, the division of Marathon Ashland for which petitioners worked was sold and petitioners lost their jobs. *Ibid.*

Petitioners filed a claim with the Secretary of Labor seeking assistance under the Trade Act. Pet. App. 4a. Petitioners alleged that they had lost their jobs because their company's parent company had increased its importation of crude oil. *Id.* at 5a.

Following an investigation, the Secretary determined that petitioners were not eligible for adjustment benefits. Pet. App. 5a. The Secretary explained that only employees involved in the production of a good are eligible for assistance under the Trade Act and that

petitioners transported crude oil and did not produce it. *Ibid.* Petitioners sought reconsideration, which was denied. *Id.* at 6a. The Secretary rejected petitioners' reliance on the 1988 amendments to the Trade Act of 1974, which extended coverage to workers engaged in exploration and drilling for crude oil. The Secretary reasoned that the amendments did not extend coverage to workers who transport crude oil after drilling. *Ibid.*

3. Petitioners sought judicial review of the Secretary's decision in the Court of International Trade. Pet. App. 7a. The Secretary sought a remand to conduct further investigation, and the court granted that request. *Ibid.* After completing that investigation, the Secretary again denied benefits under the Trade Act. *Ibid.* Petitioners renewed their action before the Court of International Trade and moved for judgment in their favor. *Ibid.* The court determined that the Secretary's decision was not supported by substantial evidence. *Id.* at 7a-8a; Pet. Supp. App. 53a-72a. The court remanded for a further inquiry into whether petitioners produced an article within the meaning of the Trade Act. Pet. App. 8a.

On remand, the Secretary again found petitioners ineligible for adjustment assistance, Pet. App. 9a-10a, and, on review, the Court of International Trade again held that the Secretary's determination was not supported by substantial evidence. *Id.* at 10a; Pet. Supp. App. 24a-52a. The court determined that petitioners were involved in the production of crude oil because crude oil is not sold or transported until after gaugers evaluate its quality. Pet. App. 10a. The court also concluded that the expansion of the definition of production in the 1988 amendments to include exploration and drilling showed that gaugers also should be understood

as producers. *Id.* at 11a. The court certified petitioners as eligible for adjustment benefits. *Ibid.*

4. The court of appeals reversed. Pet. App. 2a-24a. The court concluded that the question whether an employee is involved in transportation or production when the employee's work is performed "at the interface" between the two activities should be resolved "on the particular facts of the case, such as how the sale and transportation transactions were arranged and whether the employees were serving as agents of the producer/seller or of the purchaser or transporter." *Id.* at 15a. Because petitioners were employed by a transportation company, and not a production company, the court determined that it was "reasonable for the Secretary to conclude that [petitioners] were not involved in the production process but were serving as buyers' agents." *Id.* at 16a. The court also noted that petitioners had not offered any evidence that undercut the Secretary's determination. Pet. App. 16a. To the contrary, a representative of petitioners had offered evidence that "the gauger would determine 'whether the crude oil produced was of such a quality as to be purchased by Marathon Oil Company and transported,'" evidence that was fully consistent with the Secretary's determination. *Id.* at 16a-17a (citation omitted).

The court of appeals also held that petitioners were not eligible for benefits under the 1988 amendments. The court noted that the amendments expanded the definition of "production" to include a firm that engages in "exploration or drilling" and that petitioners were not involved in exploration or drilling. Pet. App. 17a-18a.

ARGUMENT

Petitioners seek review of the Secretary's determination that they were not eligible for assistance under the Trade Act because they were not involved in the production of a good. As the court of appeals correctly held, however, the Secretary's determination is consistent with the terms of the statute and is supported by substantial evidence. Petitioners' fact-bound challenge to the Secretary's determination does not warrant review.

1. Under the terms of the Trade Act, employees qualify for assistance only if they have worked for a firm that has "produced" an article. 19 U.S.C. 2272(a)(3). Petitioners did not satisfy that eligibility requirement. Petitioners' employer, Marathon Ashland, did not produce oil. Rather, it performed the service of transporting oil that had previously been extracted by independent producers. Moreover, petitioners were employed to assist in that transportation service, not to produce oil. Petitioners tested oil produced by independent operators, and they did so to facilitate its transportation. Pet. App. 14a. The Secretary therefore reasonably determined that petitioners were not eligible for assistance under the Trade Act.

2. Petitioners contend (Pet. 9) that the Secretary could not resolve this case without first defining the term "production." But the Secretary was not required to adopt one all-encompassing definition of production. To the contrary, the statute expressly contemplates that the Secretary may proceed on a case-by-case basis to determine whether particular claimants are eligible for assistance under the Act. 19 U.S.C. 2272. Moreover, as this case illustrates, the Secretary is fully capable of resolving questions of eligibility on a reasoned

basis without adopting an all-encompassing definition of production. To decide this case, it was sufficient for the Secretary to conclude that a firm that transports oil produced by independent producers is not involved in the production of crude oil.

3. Petitioners next contend (Pet. 14) that the court of appeals did not engage in an appropriate review of the Secretary's determination. That contention is without merit. The statutory review provision requires a court of appeals to sustain the Secretary's determination when that determination is supported by substantial evidence and is otherwise in accordance with law. 19 U.S.C. 2395(b). The court of appeals faithfully applied that standard of review: it held that the Secretary did not err in interpreting the term production to exclude a firm that engages in the transportation of crude oil extracted by independent producers; and it held that substantial evidence supported the Secretary's determination that petitioners' firm was such a transportation firm. Pet. App. 14a-17a, 21a. There is therefore no merit to petitioners' claim that the court of appeals did not engage in an appropriate review of the Secretary's determination.

Nor did the court of appeals err in failing to decide whether the Secretary's interpretation was entitled to deference under *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), or *Skidmore* v. *Swift & Co.*, 323 U.S. 134 (1944). See Pet. 12. As the court of appeals explained, it would have reached the same conclusion regardless of which of those two standards applies. Pet. App. 16a n.2. There was therefore no need for the court of appeals to resolve the question whether the Secretary's interpretation should be given deference under *Chevron* or *Skidmore*.

4. Finally, petitioners argue (Pet. 15) that the evidence that they presented was sufficient to establish that they were involved in the production of crude oil. But petitioners' showing (*ibid.*) that, absent their approval, no crude oil could be transported, demonstrates only that they played an important role in the transportation process; it does not establish that they were involved in the production of crude oil. Moreover, petitioners submitted evidence that their job was to test whether crude oil that had already been produced was ready for transportation and sale. Pet. App. 16a. As the court of appeals explained, that evidence is fully consistent with the Secretary's determination that petitioners were not involved in the production process. *Id.* at 16a-17a. In any event, petitioners' fact-bound challenge to the Secretary's determination does not warrant review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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